



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2010-0912; FRL-9680-2]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Oregon (the State) on October 6, 2010, and an August 31, 2011, supplementary letter, for the purpose of establishing transportation conformity criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures.

DATES: Comments must be received on or before **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2010-0912, by one of the following methods:

- www.regulations.gov. Follow the on-line instructions for submitting comments.

- Mail: Claudia Vergnani Vaupel, U.S. EPA Region 10, Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101
- Hand Delivery: US EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Claudia Vergnani Vaupel, Office of Air Waste, and Toxics (AWT-107). Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR-2010-0912. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Claudia Vergnani Vaupel at telephone number: (206) 553-6121, e-mail address: vaupel.claudia@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA. Information is organized as follows:

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I. What is the purpose of this action?

EPA is proposing to approve revisions to Oregon Administrative Rules (OAR), Division 252 “Transportation Conformity” of the Oregon SIP that address the requirements of section 176 of the CAA and 40 CFR part 51.390(b). By approving these revisions to OAR Division 252, EPA is making them part of the federally enforceable SIP for Oregon under the CAA.

II. What is the background for this proposed action?

Transportation conformity is required under section 176(c) of the Clean Air Act (CAA or Act) to ensure that federally supported highway, transit projects, and other activities are consistent with (“conform to”) the purpose of the SIP. Transportation conformity currently applies to areas that are designated nonattainment, and to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Act, for the following transportation related criteria pollutants: ozone, particulate matter (PM_{2.5} and PM₁₀), carbon monoxide, and nitrogen dioxide.

Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant criteria pollutants, also known as national ambient air quality standards (NAAQS). The transportation conformity regulation is found in 40 CFR Part 93 and provisions related to transportation conformity SIPs are found in 40 CFR 51.390.

EPA promulgated the Federal transportation conformity criteria and procedures (“Transportation Conformity Rule”) on November 24, 1993 (58 FR 62188). On August 10, 2005, the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA–LU) was signed into law. SAFETEA–LU revised section 176(c) of the CAA transportation conformity provisions. One of the changes streamlines the requirements for conformity SIPs. Under SAFETEA–LU, states are required to address and tailor only three sections of the rules in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and, 40 CFR 93.125(c). In general, states are no longer required to submit conformity SIP revisions that address the other sections of the conformity rule. These changes took effect on August 10, 2005, when SAFETEA–LU was signed into law. Oregon’s SIP revision updates the State’s transportation conformity provisions, OAR Division 252, to be consistent with the CAA as amended by SAFETEA–LU and EPA regulations (40 CFR Part 93 and 40 CFR 51.390). Oregon’s SIP revision also adds a provision that requires approval by the air quality agency in order for an MPO to shorten the timeframe of a conformity determination (OAR-340-252-0070).

III. What is the State’s process to submit SIP revisions to EPA?

Section 110(k) of the CAA addresses EPA’s process to act on State submissions that would revise a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

The submission includes evidence that the Oregon Department of Environmental Quality (ODEQ) provided adequate public notice of the revisions to OAR 340, Division 252 and held a public hearing on November 23, 2009. The Oregon Department of Transportation submitted comments on three aspects of the proposed rules and ODEQ provided a response on December 4, 2009. This SIP revision became State effective on February 18, 2010, and was submitted to EPA on October 6, 2010.

IV. What is EPA's analysis of Oregon's SIP revision?

EPA has evaluated this SIP submission and finds that the State has addressed the requirements of the Federal transportation conformity rule as described in 40 CFR Part 51, Subpart T and 40 CFR Part 93, Subpart A. The transportation conformity rule requires the states to develop their own processes and procedures for interagency consultation and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and U.S. DOT in consulting with the state and local air quality agencies and EPA before making transportation conformity determinations. The transportation conformity SIP must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and U.S. DOT, and requires written commitments to control measures and mitigation measures.

EPA has reviewed the submittal to assure consistency with the CAA as amended by SAFETEA-LU and EPA regulations (40 CFR Part 93 and 40 CFR 51.390) governing state

procedures for transportation conformity and interagency consultation and has concluded that the submittal is approvable with the exception of an example in OAR-340-252-0070 for shortening the conformity timeframe. Details of our review are set forth in a technical support document (TSD), which has been included in the docket for this action. Specifically, in the TSD, we identify how the submitted procedures, as clarified by the State's August 31, 2011, supplementary letter, satisfy our requirements under 40 CFR 93.105 for interagency consultation with respect to the development of transportation plans and programs, SIPs, and conformity determinations, the resolution of conflicts, and the provision of adequate public consultation, and our requirements under 40 CFR 93.122(a)(4)(ii) and 93.125(c) for enforceability of control measures and mitigation measures.

V. Proposed Action

EPA is proposing approval of the SIP revision that was submitted by the State of Oregon on October 6, 2010. The SIP revision updates OAR, Division 252 "Transportation Conformity" of the Oregon SIP so as to meet the Federal transportation conformity consultation requirements as described in section 176 of the CAA 42 U.S.C. 7506 and in 40 CFR 51.390(b), 40 CFR 93.105(a) through (e), 40 CFR 93.122(a)(4)(ii), and 40 CFR 125(c).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: 05/22/12

Signed: Dennis J. McLerran
Regional Administrator

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